

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

MARTEN TRANSPORT, LTD,  
Employer

and

Case 25-RC-10428

INTERNATIONAL UNION OF OPERATING  
ENGINEERS LOCAL UNION NO. 103, a/w INTERNATIONAL  
UNION OF OPERATING ENGINEERS, AFL-CIO,  
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held May 12, 2008, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.<sup>1</sup>

I. ISSUES

At the hearing, the International Union of Operating Engineers Local Union No. 103, a/w International Union of Operating Engineers, AFL-CIO (the "Petitioner") sought an election within a unit comprised of all full-time and regular part-time mechanics (which include the

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

trailer, tractor, reefer and tire technicians)<sup>2</sup>, parts persons<sup>3</sup>, and foremen/leadmen<sup>4</sup> employed by Marten Transport, LTD (the “Employer”) at its Indianapolis, Indiana facility. This unit would be comprised of approximately 18 employees. The Petitioner for the first time in its brief contends that it seeks a “craft unit” of mechanics and lead mechanics (also known as foremen) and takes no position on the inclusion or exclusion of the parts manager, submitting that the employee be allowed to vote a challenged ballot as the record does not address whether the position requires the skills necessary to work as a mechanic.

The Employer contends that any appropriate unit must also include the wash bay technicians and custodian. The Employer maintains however that the foremen and parts room manager should be excluded from the unit because they exercise supervisory authority within the meaning of Section 2(11) of the Act. The Petitioner contends that the foremen and parts room manager are not 2(11) supervisors, thus the foremen should be included in the unit; and, as noted above, the parts room manager should be permitted to cast a challenged ballot.

## II. DECISION

The evidence produced at the hearing reveals that the foremen and parts manager do not assign, responsibly direct, or evaluate employees, nor do they effectively recommend such actions with the requisite degree of independent judgment to establish that they are supervisors within the meaning of Section 2(11) of the Act. Therefore, it is concluded that the Employer's foremen and parts manager are not supervisors within the meaning of Section 2(11) of the Act. In addition, for the reasons discussed in detail below, it is concluded that the record evidence does not demonstrate that the Employer's foremen and mechanics (which include the tractor technicians, trailer technicians, reefer technician, and tire technician<sup>5</sup>) constitute an appropriate craft unit under the Act. Rather, it is concluded that the parts room manager, wash bay technicians, and custodian employed at the Employer's Indianapolis, Indiana share a sufficient community of interest with the foremen and mechanics, and therefore, they are included in the appropriate unit for purposes of collective bargaining.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>2</sup> The record shows that the term mechanics refers to trailer, tractor, reefer, and tire technicians.

<sup>3</sup> The record establishes that the Employer specifically classifies parts persons into two positions: parts room manager and parts room assistant.

<sup>4</sup> The record establishes that the foremen positions are also referred to as lead men. Notably, corporate-wide job descriptions were furnished; however, the record discloses discrepancies regarding titles and duties when applied to the Indianapolis facility.

<sup>5</sup> The record indicates that the tire technician position is currently open, however, no party contends that the classification should not be included in the unit.

All full-time and regular part-time foremen, mechanics (including tractor technicians, trailer technicians, reefer technician, tire technician), parts room manager, wash bay technicians, and custodian employed by the Employer at its Indianapolis, Indiana, maintenance facility; BUT EXCLUDING all truck drivers, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The unit found appropriate herein consists of approximately 21 employees for whom no history of collective bargaining exists.

### III. STATEMENT OF FACTS

#### A. Overview of Operations

The Employer is a trucking enterprise that engages in the over-the-road transport of products in a temperature controlled environment. The corporate office is located in Mondovi, Wisconsin. The Employer has terminals in Atlanta, Georgia, Ontario, California, and Wilsonville, Oregon. In addition at the time of the hearing, there was one terminal currently under construction in Dallas, Texas. The Employer also has a terminal located in Indianapolis, Indiana, which consists of adjacent operations and maintenance facilities. The employees employed by the Employer who work in the maintenance component are the subject of the petition in this instant case.

The maintenance facility is utilized to service and repair the Employer's tractors and trailers, including the refrigeration units that are mounted on the front of the trailers for climate control to preserve the perishable products. The facility operates seven days a week from 6:00 a.m. to 2:30 a.m., closing only 3 ½ hours per day. The maintenance facility (also referred to as the shop) utilizes an open space concept. There are three bays in the shop. These bays are called pull-through bays and can hold four trucks face-to-face. In addition there is a wash bay area located at the far end of the building; this bay may also be used for completely pulling in a trailer. The exterior area has a yard where services and repairs are performed on certain trucks. The parts room is located next to the mechanic work area and holds parts inventory. The mezzanine, commonly referred to as the loft area, is used to store additional parts, supplies, and miscellaneous items. The shop also has an office for the service manager.

#### B. Service Manager

Darin Proctor has been the service manager since the maintenance facility commenced operations in about November or December 2004. Proctor reports to Wade Rubin, director of regional operations and Chuck Remington, corporate maintenance manager. Proctor works Monday through Friday during unspecified hours. There is little record evidence regarding Proctor's day-to-day activities, however, he testified that he was not on the shop floor all day. In addition, there are times that he is not at the facility, but he is available by phone. For instance, on the weekends, Proctor is on-call.

The record also discloses that Proctor is solely responsible for all of the hiring and disciplining of employees in the service department. Proctor is also responsible for evaluating employees, granting employees paid time off, scheduling work hours, coordinating employee training, and awarding pay increases. Proctor testified that he created and implemented the leave system wherein only one employee may be off at a time and he must authorize all leave requests. In addition, Proctor disseminates corporate policies on issues like safety to employees. Proctor conducts bi-weekly meetings with the foremen to share information from the corporate office and discusses issues that need to be handled in the shop. He also conducts shop-wide meetings for all employees. The record discloses Proctor delegates the scheduling of services and repairs for the trucks and the coordination of the assignments of said work to the foremen; however, he has the authority to modify the schedules if circumstances warrant.

The maintenance employees all fall under the purview of the service manager. The maintenance complement comprises about 15 to 18 employees in various job classifications: foremen, mechanics (which include trailer technicians, tractor technicians, reefer technician, and tire technician), wash bay technicians, custodian, parts room manager, and parts room assistant.<sup>6</sup> The foremen, parts room manager, and custodian report directly to the service manager. The mechanics, wash bay technicians, and tire technician report to the foremen for assignments but are supervised by the service manager. The record discloses that Proctor delegates the scheduling of work assignments to foremen.

### C. Foremen

There are three full-time foremen whose status is in dispute, Robert McConnell, David Wheeler, and Mitchell Cook. McConnell works the first shift from Sunday to Wednesday from 6:00 a.m. to 4:30 p.m. Wheeler works the first shift from Wednesday to Saturday from 6:00 a.m. to 4:30 p.m. Finally, Cook works the second shift from Wednesday to Saturday from 4:00 p.m. to 2:30 a.m. No evidence was adduced pertaining to who covers the second shift from Sunday to Wednesday from 4:00 p.m. to 2:30 a.m. The foremen are responsible for opening the facility and checking that all doors are locked before leaving. Foremen, as well as the service manager and custodian, have keys to the facility. Foremen wear white shirts with gray stripes and gray pants. The foremen are paid straight time irrespective of the number of hours worked. Foremen receive a 10% increase in pay upon their promotion to foreman. Wheeler and McConnell were promoted to foremen from a tractor and trailer technician position, respectively. Currently, the foremen are paid approximately \$19 to \$21 per hour. In addition to the three full time foremen, Larry Simpson, currently a tractor technician, is about to complete the 90-day evaluation period to be promoted to a foreman. While in training, Simpson has performed the same work as McConnell, Wheeler, and Cook. When a foreman is absent, Chet Peters, a mechanic, fills in for that person and assumes all the duties and responsibilities. In the record, Peters was referred to as a lead person; however, the Employer did not establish that it has a lead person classification at the Indianapolis maintenance facility. No evidence was presented regarding to what extent Peters

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<sup>6</sup> At the time of the hearing, the tire technician and parts room assistant positions had been vacant for three weeks and three months, respectively. No evidence was presented on whether the Employer anticipated filling these positions or eliminating them.

spends his time acting as a substitute for the foremen. Neither party contends that Simpson or Peters are supervisors under Section 2(11) of the Act.

The foremen are generally responsible for scheduling the service and repairs for the Employer's fleet. This process requires the foremen to have access to a phone and computer. Proctor authored and disseminated a book for the foremen regarding some of their job duties. Proctor prepared this book when the Employer started employing foremen to help Proctor in his absence. The book is kept on the foremen's desk, which is apparently shared by all three foremen. The book includes detailed steps and examples on sending units to outside vendors, making hotel reservations for drivers, handling trucks with accident damage, contacting the service department, and preparing terminal routing reports. The book does not set forth guidelines for assigning repair order work. The coordination of the scheduling process for repair orders is initiated, typically from a driver, by a request for a service or repair job through the phone, email, or the Qualcomm. The Qualcomm system is satellite equipment that allows two-way communications and is used by the foremen and employees requesting maintenance work. The foremen are then responsible for scheduling when the truck can come into the facility for the repairs.

Once the repair orders are compiled, the foremen are responsible for the assignment of work. One foreman testified that when work is scheduled on his shift, he assigns it to an available mechanic. He stated that he has the most senior and most experienced mechanics on his shift and they can all perform the same jobs. When a mechanic completes a job, McConnell assigns the next truck in need of service to that mechanic. The foremen monitor the mechanics' work performance and quality of work. When foremen are on the shop floor, they typically carry a mobile phone. On occasion, foremen will perform service repair work on the various types of trucking equipment. When performing such mechanics, work, Foremen use the shop tools, as they are no longer required to maintain their personal tools at the shop. Unlike mechanics, Foremen do not receive a shoe and tool allowance. Although, Proctor testified that the foremen also resolve personnel issues, he did not provide any specific examples. Rather, the testimony indicated that the foremen handle complaints made, not by mechanics, but by the truck driver or operations personnel regarding maintenance work performed. According to foreman McConnell, if a driver complains about an issue allegedly caused by or with the servicing of a vehicle, he refers that person to the service manager. The foremen are required to attend the bi-weekly meetings held by the service manager in which he shares corporate information and discusses issues which need to be handled in the shop.

In addition, foremen perform administrative work such as recording attendance and correcting time records that are submitted to the service manager. Notably, there is a computerized time clock used by all employees, including foremen. The service manager also has access to time and attendance through this system. McConnell testified that he has notified Proctor about employees' attendance records and provided his input on the matter. Specifically, McConnell informed Proctor that an employee was repeatedly absent and tardy. The record, however, is unclear what effect this report had on the employee's employment with the Employer. Additionally, Proctor testified that he uses input from foremen for employee evaluations which determine promotions, terminations, and discipline. The only evidence in the record regarding this role in evaluations was that on a one-time basis, apparently over two years

before the hearing, McConnell filled out scores for 90-day review of an employee. Subsequently, he was told by Proctor that his scores were used for a comparison with Proctor's scores on the review. There was no evidence, however, that Proctor was influenced to change his scores based on McConnell's scores of the employee. Nor, was there any indication in the record what impact, if any, such scores had on the employee's terms and conditions of work.

#### D. Parts Room Manager

The parts room manager, Dan Stanfill, facilitates the daily operation of the parts room, including inventory control, special orders, defective merchandise, and direct shipments. He controls the inflow and outflow of parts and supplies necessary to repair and service the trucks coming into the facility. He provides the mechanics with the parts and supplies they need to perform mechanic work on the trucks. Although, Proctor testified that Stanfill could perform mechanic work, the record does not contain any specific examples of the parts manager performing such work. The parts room manager works Monday through Friday from 8:00 a.m. to 4:30 p.m.; wears the same uniform as the foremen; and is paid \$19.03/hour plus time and a half for overtime. The parts room manager is required to punch the computerized time clock for attendance; has no authority to modify attendance records; and has never evaluated any employees. The parts room manager does not attend the foremen meetings but meets with the service manager one-on-one regarding the parts room. The parts room remains open during times when the parts manager is not present at the facility. In fact he has been instructed only to lock the room while he is out to lunch, but to leave it open for the second shift mechanics.

In the past, the Employer has employed a night parts room assistant, however, the position has been vacant for approximately one month. Stanfill trained this employee for about one and half months. Stanfill testified that he left notes for the night parts room assistant to inform him what work had not been completed during the day shift. Although, he complained to Proctor that the parts assistant was not getting the work done, there is no indication in the record what, if any, impact this complaint had on the parts assistant's terms and conditions.

#### E. Mechanics

Currently, the Employer employs about eight to eleven tractor technicians, two trailer technicians, and one reefer technician. The tractor technicians perform mechanical work on the all power units in the tractors. Their work may also include service and/or repairs of lights, batteries, and air conditioners. The trailer technicians perform mechanical work on the trailers including services and/or repairs on tires, brakes, and lights. In general the mechanics work 10 hours per day for four days on one of the four designated shifts. The reefer technician works inside the shop and outside in the yard performing services and/or repairs on the refrigeration units. The reefer technician's work hours are not specified in the record. The tire technician, which is currently open, replaces tires on trailers and tractors. The mechanics receive the assignment regarding which truck to work on from the foreman on their shift. During downtime, mechanics may perform custodial duties such as quick equipment repairs and clean-up.

Some of the mechanics have certifications but it is not a pre-employment requirement. While there is some indication on the record that the Employer has arranged for the mechanics to attend training on various mechanical topics, there is no evidence regarding the frequency and to what extent such training is required. The mechanics are required to provide their own personal tools with which to perform the repairs, however, the record does not describe the extent and/or cost of such tools. Mechanics are provided a shoe and tool allowance by the Employer. All mechanics wear blue uniforms.

The mechanics' pay varies between \$14 per hour to \$19 per hour, depending on experience. Because this rate is based on experience, it is possible for a mechanic's pay rate to be higher than that of a foreman. All mechanics are paid straight time for regular and overtime hours worked. As discussed above, mechanics have been promoted to foremen. Upon this promotion the mechanic receives up to a 10% increase in pay rate, however their other benefits have remained the same.

#### F. Wash Bay Technicians

The Employer employs two wash bay technicians, also referred to as truck wash technicians. They are responsible for washing and detailing the trucks, shelving supplies, storing and pulling parts, and assisting with the clean-up. They work the split shift from either 2:00 p.m. to 10:00 p.m. or 2:30 p.m. to 10:30 p.m. They are paid less than \$14/hour. Wash bay technicians may perform light repairs such as changing tires on tractors and/or trailers and replacing and repairing lights on tractors and/or trailers. In the past four years, at least one wash bay technician has been promoted to a mechanic after obtaining additional training. Currently, both wash bay technicians are enrolled at Lincoln Technical College of Automotive Diesel studying automotive and diesel technology. The wash bay technicians are required to clock in to the same computer as the other service employees and wear the same blue uniform as the mechanics.

#### G. Custodian

There is one custodian on staff at the maintenance facility. The custodian is responsible for cleaning the building and grounds; stocking and transporting parts; taking drivers to clinics; repairing equipment such as the laundry machines and pressure washers; storing supplies; and assisting the parts manager, upon request, with inventory. In performing these tasks, the custodian interacts with the technicians four to five hours a day. If the custodian needs any parts for his repair to equipment in the facility, he will get them from the parts room. The custodian works from 8:00 a.m. until 4:30 p.m., Monday through Friday. The custodian is paid \$14/hour and receives overtime pay.

### IV. DISCUSSION

#### A. The Supervisory Issue

To determine whether an individual is a supervisor within the meaning of Section 2(11) of the Act, the Board examines: (1) whether the individual has the authority to engage in any 1

of the 12 enumerated powers listed in Section 2(11) of the Act; and (2) whether the exercise of such authority requires the use of independent judgment. NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571, 573-574 (1994); NLRB v. Kentucky River Community Care, Inc., 121 S.Ct. 1861, sl.op. at 5 (May 29, 2001). Section 2(11) of the Act defines the term supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The burden of proof rests upon the party alleging that an individual is a supervisor. NLRB v. Kentucky River Community Care, 532 U.S. 706 (2001); Bennett Industries, 313 NLRB 1363 (1994). A lack of evidence is construed against the party asserting supervisory status. The Board is reluctant to confer supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999). The Board has found that particular indicia of supervisory status has not been established if the evidence is in conflict or otherwise inconclusive regarding that indicia. Phelps Community Medical Center, 295 NLRB 486, 490 (1989). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisor authority. Sears Roebuck & Co., 304 NLRB 193 (1991).

Since the Employer is the party asserting the supervisory status of foremen McConnell, Wheeler, and Cook and the parts room manager Stanfill, the Employer has the burden of proof. The Employer does not contend, nor has it provided any evidence that the foremen and/or parts room manager possess and exercise the authority to hire, transfer, suspend, lay off, recall, promote, or discharge employees. The Employer however does contends that the foremen possess and exercise the authority to adjust employee grievances and that they effectively recommend promotion, termination, and discipline through their involvement in the evaluation process. The Employer also contends that the foremen and parts room manager use independent judgment when they assign and responsibly direct employees. Overall, the record does not support the Employer contentions and thus it has failed to meet its burden of proof.

1. Foremen Robert McConnell, David Wheeler, and Mitchell Cook

The Employer contends that the foremen participate in the evaluations of mechanics and thus possess and exercise an indicia of supervisory status. The enumeration of supervisory powers in Section 2(11) does not include “evaluate.” It is only when evaluations affect the wages or employment status of employees that the individual performing the evaluations will be found to be a supervisor. Franklin Hospital Medical Center d/b/a Franklin Home Health Agency, 337 NLRB 826 (2002); Harborside Healthcare, Inc. 330 NLRB 1334 (2000); Harbor City Volunteer Ambulance Squad, 318 NLRB 764 (1995). The Employer argues that the service manager has solicited input from the foremen regarding employee work performance and based



on their input he has terminated or disciplined employees. However, the only record evidence regarding a foreman's participation in the evaluation process was when McConnell provided a single written evaluation score of an employee for a 90-day review. In this lone instance, the record established, however, that the service manager performed his own evaluation and merely used McConnell's input as a comparison for his scores. No evidence was presented that the service manager modified his scores based on McConnell's scores. Nor was any evidence introduced that the scores on this 90-day review impacted the employee's wages or employment status. Other than this limited testimony regarding participation in a 90-day review, the record is devoid of any detailed, specific evidence on the foremen's participation in the evaluation process.

The Employer further contends that the service manager seeks input from the foremen which he then uses in decisions to retain, discipline and terminate employees. The only record evidence relating to this contention is that foreman McConnell informed the service manager that an employee was repeatedly tardy and absent. McConnell recorded such information on a daily basis on a sheet at the foremen's desk. The Board has held that no indicia of supervisory status is established when incident reporting does not always result in discipline and when management conducts an independent investigation into the reported incident before issuing discipline. See Franklin Home Health Agency, 331 NLRB 826, 830 (2002); Hausner Hard-Chrome of Ky., Inc., 326 NLRB 426, 427 (1998). In the instant case, the record does not establish what if any consequences the employee suffered as a result of this reporting. In addition, it is not clear what role, other than reporting the fact of the employees' absenteeism, McConnell played in any actions taken against the employee.

The Employer also contends that the foremen can adjust grievances. The record discloses that the foremen handle maintenance issues, such as driver complaints, related to work performed on the trucks. If there are problems the foremen can not resolve, they contact the service manager. While the Employer contends that the foremen handle "personnel" issues, the record is devoid of any evidence of instances where the foremen has resolved any grievances brought by the mechanics.

Finally, the Employer claims that the foremen utilize independent judgment when assigning work to mechanics and responsibly directing their work. Recently, the Board in Oakwood Healthcare, Inc., 348 NLRB No. 37 (2006), clarified the meaning of "assign", "responsibly to direct", and "independent judgment". The Board held that "the assignment of an employee to a certain department or to a certain shift or to certain significant overall tasks would generally qualify as "assign" within the ambit of the Act. In the instant case, the foremen do not assign employees to particular shifts or departments. The record reveals, however, that the foremen do regularly assign work to the mechanics. Merely assigning such work, however, is not sufficient to confer supervisory status. Rather, the assignment must require the use of independent judgment on the part of the individual making the assignment. Assignments must involve a degree of discretion that rises above the routine or clerical in order for supervisory authority to be found. Oakwood Healthcare, Inc., Id. at p. 10. In the instant case that degree of discretion is not present. The foremen are responsible for compiling and generating work orders. They then decide which mechanic to assign to the work order. The evidence established that the mechanics are relatively equally qualified and the foremen use a rotational system to assign

work. The act of assigning a particular repair to a mechanic is much more of a routing function and not one that would convey supervisory status on the foremen. In addition, the record reveals that the foremen have limited authority to instruct employees to assist with minor miscellaneous tasks such as custodial work when they were not busy.

In defining supervisory status, the Board also adopted the circuit courts' definition of "responsibly to direct". "For direction to be 'responsible', the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly." *Id.* The record discloses that foremen conduct follow-up checks on the mechanics' work to ensure it was done correctly. However, the record reveals no evidence of any way in which the Employer holds any of the foremen accountable for the performance of the mechanics they are allegedly directing. Therefore, there is no evidence of supervisory status.

Based upon the foregoing, the evidence does not support a finding that the foremen possess the requisite authority to engage in any of the 12 enumerated powers listed in Section 2(11) of the Act<sup>7</sup>. Thus, I find that the Employer has failed to meet its burden of establishing that foremen are 2(11) supervisors as defined by the Act.

## 2. Parts Manager Dan Stanfill

The Employer also asserts that the Parts Manager Dan Stanfill is a supervisor within the meaning of Section 2(11) of the Act because he assigned work to the parts room assistant and responsibly directed his work, both using independent judgment. First, it is noted that in order to be deemed a supervisor within the meaning of Section 2(11), the Act requires that the individual exercise supervisory authority over other employees of the same employer. McDonnell Douglas v. NLRB, 665 F.2d 932, 936 (9<sup>th</sup> Cir. 1981); Douglas Aircraft Co., 238 NLRB 668, 671 (1978). In the instant case, the Employer currently does not employ a parts assistant, and there is no indication in the record whether this position will be filled in the foreseeable future. Given the absence of any exercise of supervisory authority for the past few months or any time in the foreseeable future by Stanfill over any employee of the Employer, I cannot find Stanfill to be a supervisor under the Act.

Further, the record revealed that during the short time, the parts room manager worked with a parts room assistant, he merely left notes for the parts room assistant informing him what work was not completed during his shift. This alone is not enough to cloak an employee as a supervisor within the meaning of the Act. Nor did the record contain any evidence that Stanfill was held accountable in any fashion for the work performed by the parts room assistant. Based

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<sup>7</sup> Consideration of secondary indicia is not warranted in this case. Without a finding that foremen and/or the parts room manager possess at least one indicia of supervisory status, secondary indicia of supervisory status is an insufficient basis upon which to find supervisor status. Central Plumbing Specialties, Inc., 337 NLRB 973, 975 (2002); Billows Electric Supply of Northfield, 311 NLRB 878 (1993).

on the above, the Employer has failed to meet its burden of establishing that Stanfill is a supervisor under the Act.

## B. The Bargaining Unit Issue

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act." NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting and it need not choose the most appropriate unit. See American Hospital Assn. v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

It is undisputed that the mechanics should be included in any unit found appropriate. The Petitioner asserts that the petitioned-for unit is an appropriate unit, which is comprised of the Employer's mechanics (which include the tire, trailer, tractor, and reefer technicians) and foremen, as well as the parts persons. In its brief, the Petitioner for the first time argued that the bargaining unit be defined as a craft unit. In addition, the Petitioner modified its bargaining unit request by requesting that the parts room manager vote a challenged ballot because the evidence at hearing was insufficient to establish whether the parts room manager possesses the requisite skills to be included in a mechanic craft unit.

A craft unit is one consisting of a distinct and homogenous group of skilled journeymen craftsmen who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. Burns and Roe Service Corp., 313 NLRB 1307, 1308 (1994). In determining if a unit is an appropriate craft unit, the Board examines the following factors: whether the employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of excluded employees; whether the duties of the petitioned-for employees overlaps with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. The Board has previously held that a unit of automobile mechanics or service technicians can be an appropriate craft unit. Fletcher Jones Chevrolet, 300 NLRB 875 (1990); Dodge City of Wauwatosa, Inc., 282 NLRB 459 (1986). Notably, there must be specific evidence to support a finding of a mechanic craft unit. Dodge City of Wauwatosa, Inc., 282 NLRB 459 (1986); RH Reter Chevrolet, 303 NLRB 791 (1991); Gregory Chevorlet, 258 NLRB 233, 234, 238 (1981); Diamond T. Utah, Inc. 124 NLRB 966 (1959); also see American Potash & Chemical Corporation, 107 NLRB 1418.

For instance, in Dodge City, the record revealed that although mechanics did not have to be certified when hired by the Employer, the mechanics obtained certifications and/or would be certified within a short time span. For those mechanics who were not certified, the record disclosed that they had years of experience as a mechanic. In addition, the record showed that the Employer paid for periodic company-sponsored training and college courses for its mechanics, and mandated that the mechanics attend classes on a regular basis to maintain and

upgrade their skills. Moreover, the record disclosed that the mechanics had specific specialties, supplied their own tools, were paid based on different standards, performed all of their work in a designated area, had casual contact with other employees, and had limited transfers for over 15 years. Finally, in that case there was no evidence in the record to show that any other employees performed mechanic work. Notably, where cases have found that other employees perform more than incidental mechanic work and have significant contact with the mechanics, the mechanics are viewed as the anchor of an appropriate craft unit, consisting of apprentices and helpers, whose overall function is to repair and maintain the fleet. Gregory Chevrolet, 258 NLRB 233 (1981); see also Fletcher Jones Chevrolet, 300 NLRB 875 (1990); Dodge City of Wauwatosa, Inc., 282 NLRB 459 (1986).

In the present case, there is evidence that the mechanics perform some specialized mechanic work. However, the evidence is insufficient conclude that the mechanics and foremen constitute an appropriate craft unit as requested by the Petitioner. The mechanics' wage rate is initially set based on experience and longevity in the business. However, the mechanics' specific experience, duration of work, and specialties, if any, are unknown. The record discloses that the employer provides unspecified shop-wide training for all employees; but, there is no specific evidence of any company-sponsored training for the mechanics or on mechanical-related topics. The record reveals that mechanics do not have to be certified prior to hire. Although the Employer does not have a formal apprenticeship program, the Employer may send employees to school to be certified in areas such as brakes, axles, and air conditioners. It is unknown, however, whether this occurred and if so, to what extent and whether the Employer paid for the schooling. In addition, no evidence was presented that mechanics are required to attend continuing education classes and/or trainings to maintain or upgrade their skills. Mechanics are required to supply their own tools but the Employer supplies some tools for the shop.

As for the foremen, the record reveals that they primarily act as coordinators of the repair work, rather than perform actual mechanic work. Nor is there any indication in the record that the foremen are required to participate in a formal training in order to maintain or upgrade their mechanical skills. The record further discloses that when foremen perform mechanic work they are not required to provide their own tools, rather they utilize company-owned tools.

In addition, the evidence discloses that other employees perform incidental mechanic work. The record reveals that the wash bay technicians perform mechanical duties such as changing tires and lights on the tractors and trailers. In fact, they may perform repairs on other parts of the truck under supervision. It is unknown how often and where the wash bay technicians perform such mechanical work. The Employer states that the parts room manager may also perform mechanical work; however, no evidence was presented on whether the parts room manager has ever performed such mechanic work, uses specialized tools, or possesses the requisite skill level or experience.

The record does not demonstrate that the petitioned-for employees are a distinct homogeneous group of skilled journeymen craftsmen, such that they comprise an appropriate unit. Rather the evidence supports a finding that all of the maintenance facility employees share a sufficient community of interest to constitute an appropriate unit. In making a determination regarding employees' community of interest, the Board weighs a variety of factors, including

similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

In the instant case the foremen, mechanics, wash bay technicians, parts room manager, and custodian all work in the same building which utilizes an open space design. Although each classification has varied duties to perform, they each have a degree of integration of work. The foremen, initiate the work process by generating repair orders and then assigning each to a mechanic. The foremen may at times assist the mechanics with the work by utilizing company-owned tools. The mechanics are responsible for the repair and maintenance of the fleet and are supported by the foremen, parts room manager, and wash bay technicians. For instance, the mechanics interact with the parts room manager in the process of obtaining parts from the parts room. The evidence also reveals that the wash bay technicians perform less skilled mechanical work but may engage in other work on the trucks under proper supervision. Although the custodian performs mechanical repairs on equipment in the shop, no evidence was presented that the custodian performs mechanical work on the fleet. The evidence reveals, however, that mechanics perform quick repairs on equipment and do grounds work. Also, the custodian interacts with the mechanics about four or five hours in a work day. In addition to the above interaction, the record also reveals that the service manager provides shop-wide training for the employees. Further, since the Board does not find a one-man unit appropriate for collective bargaining, the custodian would be denied the right of representation were he excluded from the present unit. Luckenbach Steamship Co., 2 NLRB 192 (1936); Copier Care Plus, 324 NLRB 785 (1997).

The foremen, mechanics, wash bay technicians, and parts room manager work overlapping hours Monday through Friday. Employees' work schedules are staggered to cover all the shifts. The foremen, mechanics, wash bay technicians, and custodian are compensated similarly and within a specified range, between \$14 and \$21 per hour. The evidence reveals that mechanics may be promoted to foremen and wash bay technicians may be promoted to mechanics. The parts manager and custodian are compensated differently from the foremen, mechanics, and wash bay technicians; but their hourly wage rates are within the specified range for the other employees. Within the maintenance facility there is no clear line of demarcation. The foremen, parts room manager, and custodian report directly to the service manager. Although the mechanics work with the foremen regarding their work assignments, the evidence shows that they are supervised by the service manager. The service manager is responsible for ensuring work coverage Sunday through Saturday.

Based on the above, the evidence supports a finding of common duties, integration, and interchange within the maintenance facility. I find that the foremen, mechanics, parts room manager, wash bay technicians and custodian share a sufficient community of interest. Therefore, they constitute an appropriate unit for the purposes of collective bargaining.

## V. CONCLUSION

Based upon the evidence described above, it is concluded that an appropriate unit shall include the Employer's foremen, mechanics (which include the tractor technicians, trailer technicians, reefer technician, and tire technician), parts room manager, wash bay technicians, and custodian employed at the Employer's Indianapolis, Indiana maintenance facility. Additionally, it is concluded that the foremen and parts room manager are not supervisors within the meaning of Section 2(11) of the Act.

## VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Union of Operating Engineers, AFL-CIO. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB

359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the undersigned to assist in determining an adequate showing of interest. In turn, the list shall be made available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577 **on or before June 16, 2008**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, [www.nlr.gov](http://www.nlr.gov),<sup>8</sup> by mail, or by facsimile transmission at (317)226-5103. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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<sup>8</sup> To file the list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, the user must check the box next to the statement indicating that the user has read and accepts the E-Filing terms and then click the "Accept" button. The user then completes a form with information such as the case name and number, attaches the document containing the election eligibility list, and clicks the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

## VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **June 23, 2008**. The request may be filed electronically through E-Gov on the Board's web site, [www.nlrb.gov](http://www.nlrb.gov),<sup>9</sup> but may not be filed by facsimile.

SIGNED at Indianapolis, Indiana, this 9<sup>th</sup> day of June 2008.

/s/ Rik Lineback

Rik Lineback  
Regional Director  
National Labor Relations Board  
Region Twenty-five  
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<sup>9</sup> Electronically filing a request for review is similar to the process described above for electronically filing the eligibility list, except that on the E-Filing page the user should select the option to file documents with the **Board/Office of the Executive Secretary**.